since April, 1956, when he purchased the land on which your said houses are erected, as agreed by him under the said agreement."

The respondent replied through his solicitor to that letter tendering $100 being ground rent for the months of May and June, 1958. The respondent's letter refers to the fact that the respondent had himself previously tendered rent to the appellant, but it had been refused. The appellant, through his solicitors, replied to that letter refusing tender of the $100 for two months' rent and returning the money to the respondent's solicitor stating that the appellant now required the land for his own use. The second paragraph of that letter states:—

"My client states that under paragraph 1 of the agreement referred to in your said letter, your client agreed to vacate, demolish and remove his houses Nos. 38-B and 38-C, Mukim 13, Ayer Hitam Road, Penang, within 24 months from the date of the completion of the purchase of the said land and hereditaments by my client. As a result, my client, as agreed by him, allowed your client to occupy the said land for the said 24 months and up to date without any rent."

That paragraph omits the important fact that if, in fact, the respondent demolished and removed the houses within the period of 24 months he was to receive $1,000 from the appellant. That letter, however, was shortly followed by another one, which contained the curious sentence:—

"I am now instructed by my said client, Letchman alias Letchimanan (i.e. the appellant) to inform you that my client is prepared to allow you to continue to stay provided you pay all the rents due i.e. from 1st April, 1956, at the agreed rate of $50 a month."

The respondent declined to make any such payment. Hence these proceedings, in which the appellant, as plaintiff, claimed rent at $50 a month, from the date of the original agreement, 12th April, 1956, up to the end of April, 1959, after which date he in fact transferred the land to his brother.

The only question for consideration by the learned President was whether upon a construction of clause 3 of the agreement the rent of $50 a month was payable as from the commencement of the agreement, or whether it was to commence, if the respondent still remained in possession of the land, after the expiration of 24 months, being the period within which he was required to demolish and remove the two houses from the land. The learned President held — and, in my view, rightly held — that the proper construction to be placed on clause 3 of the agreement was that the rental only became payable if the respondent remained in possession after the period of 24 months had expired.

It was Mr. Subbiah's contention both in the lower Court and here that on his construction of the agreement the rent was to be paid from the date of entering into the agreement and that it was merely as an act of grace on the part of the appellant that he exempted the respondent from payment of any such rent within the period of two years. I am quite unable to see how any such construction can be placed upon that clause of the agreement. In my view, the learned President was perfectly right in his construction of the clause that rent should only commence to be paid as from the date of the expiration of the agreement itself. In my view, this appeal must be dismissed.

Mr. Subbiah has raised the point that in any event the appellant was entitled to succeed as to his claim for payment of the rent as from the date of expiration of the agreement up to the end of April, 1959. No doubt it was the duty of the respondent to have paid the rent either direct to the lessor or, alternatively, brought it to Court. It was, in fact, tendered to the lessor, but refused by him. Mr. Jag-Jit Singh concedes that since the appellant was, in fact, entitled to receive payment of the rent as from the date of the expiration of the agreement, it would be fair and reasonable that this appeal should be dismissed, with an order that the respondent should receive his costs only as to two-thirds of the amount both in the lower Court and in the appeal before this Court.

Appeal dismissed.

Solicitors: *Natha Singh & Subbiah; Jag-Jit Singh.*

SINARAJU v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Rigby and Neal JJ.) September 12, 1960]

[Ipoh — F.M. Criminal Appeal No. 14 of 1960]

Criminal Law and Procedure — Confession — Free and voluntary — Denial — Corroboration — Summing-up to jury.

When a person has been in police custody and the only evidence tendered against him at his trial is a confession, which is retracted, it is the duty of the Court to enquire into the matter with great care and satisfy itself that the confession has not been made by an inducement, threat or promise made by the police.

When a Judge sums up to a jury he must not be taken to be inditing a treatise on the law. He addresses himself to the particular facts of the case then before the jury, and no Judge can affect, in those circumstances, to give an exhaustive definition, or one which applied to every conceivable case.

Cases referred to:—

(1) *The King* v. *Meade* [1909] 1 K.B. 895, 898.

(2) *Yap Sow Keong & Anor.* v. *Public Prosecutor* [1947] M.L.J. 90, 91.

COURT OF APPEAL (CRIMINAL).

D. R. Seenivasagam for the appellant.

Abdul Hamid bin Omar (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment of the Court): We have come to certain conclusions regarding this case and there is no reason why they should not be stated here and now.

This appellant and another man were tried at the Ipoh Assizes before Mr. Justice Azmi and a jury for the murder of one Tangamani s/o Narayanan at Sengat Estate on or about 28th December, 1959, in contravention of section 302 of the Penal Code. The appellant was convicted

by a majority verdict and sentenced to death. His co-accused was found not guilty.

In the case of each accused the main part of the evidence against him was a confession alleged to have been made before the Ipoh Magistrate. In each case there was a certain amount of corroboration of the contents of the confession, but I think it is only fair to say that in each case without the confession there was nothing like the necessary *quantum* of evidence to support a conviction. With the confessions, however, there is no room for doubt that there was ample evidence in each case to support a conviction.

In the case of each accused it was the prosecution case that the confession had been made freely and voluntarily and that its contents were true. In each case it was the story of the accused that the confession was untrue and involuntary and had been extorted from him by various oppressive practices on the part of the Police.

The question of "free and voluntary" was considered in the first instance by the trial Judge when the admissibility of the confessions was challenged and he came to conclusions unfavourable to each accused and allowed the confessions to be read in evidence. In his charge to the jury, however, he reminded them that although the confessions had been read to them it was for them to say whether they were satisfied that the confessions had been made voluntarily and whether they were satisfied that the contents of them were true. It would appear that as regards the two confessions the jury came to opposite conclusions. As regards the appellant's co-accused it is quite clear that for some reason or other they were not prepared to rely on it. In the case of the appellant it is clear they did place some reliance on it.

What has been attacked before us is the way the learned trial Judge dealt with these confessions in his charge to the jury. It is said, and to a large extent we agree, that these confessions were denied at the trial by the parties who had made them. Neither accused went into the witness box, but each of them made a statement from the dock in which he alleged that the confession was extorted from him by torture, that the contents were not true and that he had no connection whatsoever with the murder. In the circumstances we were told the trial Judge should have directed the jury to approach the question raised by the confessions with very great care. He should have impressed upon them the desirability of looking for corroboration and he should have impressed upon them the fact that although by reason of the relevant section in the Evidence Ordinance the confession of one accused might be taken into consideration as against his co-accused, yet much less weight should be atached to it than to any other sort of evidence.

As I have said, we agree. I would, however, at this stage read some observations by the late Mr. Justice Darling in the case of *The King* v. *Meade*[1]:—

> "It is necessary to repeat what has often been said before in this Court, namely, that when a judge sums up to a jury he must not be taken to be indicting a treatise on the law. He addresses himself to the particular facts of the case then before the jury, and no judge can affect, in those circumstances, to give an exhaustive definition, or one which applies to every conceivable case".

These words are very much in point here. It is true that Azmi J., did not enunciate a series of propositions of law, that he did not in terms say to the jury: these are retracted confessions; you must regard them with care; in the case of every confession as a matter of prudence you should look for corroboration; the confession of a co-accused may be evidence but it is very weak evidence.

It is true he did not say these things in terms but when we read the summing-up as a whole we are satisfied that the effect of these propositions was sufficiently conveyed to the jury. Again and again he said they must consider the evidence of the confessions with care. Again and again he said that unless they were satisfied in the first place that they were voluntary and in the second place they were true, they should not believe the confessions. He reminded them that the appellant had retracted his confession although he did not use the word "retracted" and for myself I very much doubt if the jury would have understood that word had he used it. He dealt at great length with the question of corroboration and pointed out what in his view was available corroboration, and he pointed out that very little weight was in fact to be attached to the confession of the co-accused.

In the end we are satisfied that no reasonable jury could have any doubt as to the way in which it was to approach the confessions in the consideration of the case and in the circumstances we think we have no option but to dismiss the appeal.

Before departing from the case I think I should repeat the following passage from the judgment of the Court of Appeal for the Malayan Union in the case of *Yap Sow Keong & Anor.* v. *Public Prosecutor*[2]:—

> "We wish it to be known that when a person has been in police custody and the only evidence tendered against him at his trial is a confession, which is retracted, it is the duty of the Court to enquire into the matter with great care and satisfy itself that the confession has not been made by any inducement, threat or promise made by the police. Since this precaution was taken by the learned trial Judge in this case, the appeal of the first appellant is dismissed".

Appeal dismissed.

Solicitors: *S. Seenivasagam & Sons.*